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## **DELIVERING CHANGE, CHANGING DELIVERY A NEW TRADING COMPANY FOR SHROPSHIRE COUNCIL**

### **Responsible Officer**

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### **1. Summary**

- 1.1** This report sets out the case for creating a new Council-owned company (described as NEWCO in this report), as a vehicle for delivering a range of public services in Shropshire (and beyond the County's boundaries) in the future. It seeks Members' approval to incorporate NEWCO, appoint "shareholder" representatives of the Council as the owner of the company, and a board of directors, and to identify the initial wave of those services that can be transferred to NEWCO from the Council in the next 12 months.
- 1.2** This paper is closely connected to an accompanying report on the benefits of moving the Council's 'core' future role to become a 'strategic commissioner' of local public services. The two papers together represent a coherent and proactive approach to the demand and supply side challenges facing the Council in a prolonged period of severe constraints on funding for local public services. These proposals represent the culmination of the Council's agreed programme for the transformation of local public services, in order to retain their scope and quality, with fewer resources, and to avoid cuts in essential service provision.
- 1.3** This report also makes clear the interplay between the Council and key delivery partners in other sectors, including the local voluntary and community sector (VCS), the private sector, and other local organisations in the public sector. By using NEWCO as a vehicle to attract investors, partners and customers, the Council will be better able to meet its strategic objectives of promoting Economic Growth and ensuring Flourishing Shropshire Communities. NEWCO will enable the generation of "profit with a public purpose", and will stimulate the local economy through the creation of sustainable local jobs, as well as helping to enable local people to take control and influence over the major decisions which affect their quality of life.

## **2. Recommendations**

That Cabinet Members recommend to full Council that it:

- 2.1 Agrees the creating of NEWCO, as a wholly owned Council company, in the first instance, to act as the “umbrella” delivery vehicle for a range of new service provider solutions to better meet the needs of local people;
- 2.2 Approve the proposed legal and contractual arrangements for the direction and oversight of the new company, (as set out in Appendix 1 and sections 5-8 of the report), with the Cabinet acting as the owner’s “shareholder” committee on behalf of the Council;
- 2.3 Receives a further, more detailed paper on the governance arrangements for the new company, which sets out clearly the roles, legal obligations and accountability of the directors of the company, and also clarifies the issues of the direct involvement of elected members on its Board.
- 2.4 Requests the Chief Executive, in consultation with the Leader of the Council, to bring forward to Cabinet for decision proposals on those current services which should be the first to transfer to the new company within the next 12 months, subject to consultation with staff, stakeholders and the trade unions;
- 2.5 Requests the Chief Executive similarly, in consultation with the Leader of the Council, to bring forward to Cabinet for decision proposals on the future transfer of other Council services to NEWCO, progressively over the next 2-3 years, as well as identifying those current services that will remain in-house for the foreseeable future.

## **REPORT**

### **3. A collaborative approach to future public service provision**

- 3.1 The Council has already agreed that, to achieve its strategic outcomes and deliver the medium term financial plan, it must be able to provide services differently, to trade so as to gain new sources of funding, and to partner with others to reduce costs and increase effectiveness. Whilst the Council will continue to deliver some key services directly in-house, others will be provided through the new delivery models that we create – whether these are social enterprises, staff mutuals, or new companies that are owned wholly by the Council or jointly with our chosen partners. This exciting array of new businesses will form a sustainable marketplace for the provision of local services run in the interests of local people. The newly available option of a Council-owned trading company will provide an essential focal point for a broad range of collaborative ventures with others in the future, including local town and parish councils.

- 3.2 Under new local government legislation, the Council is able to set up a trading vehicle with the ability to create “public profit”. Any return made by the company can be re-invested in local public services. Such a company would be charged, through the Council as a strategic commissioning organisation, with delivering services differently, to achieve improved outcomes at reduced cost.
- 3.3 Our preference is to have a flexible and pragmatic approach to future models of service provision, which allows a mix of solutions depending on what works best in the interest of local people, rather than a single model. This allows us to take advantage of the full range of new delivery vehicles available to us, and a “gateway” process is being devised to ensure consistent decision making about the best vehicle for each particular aspect of service delivery, as part of the Council’s market making role.
- 3.4 Each of these new vehicles involves setting up a company which will operate as an arms-length business. But, the various forms of service delivery treat differently the “profit” made by the business, as follows:
- Staff Mutuals – such as the John Lewis Partnership are owned by the staff of the company who share its dividends as “private profit”;
  - Social enterprises – create “social profit” which must be reinvested in the business in accordance with its particular stated aims and objectives; and
  - Wholly-owned Council companies (or Joint Venture partnerships involving other owners also) – create “public profit” if they are successful, which would be available to the Council for investment in improving a wide range of services for the public.

In effect, all these approaches remove the historical divisions between the public, voluntary and private sectors and enable those sectors to work together in new and more effective forms of partnership for their mutual interest. The new delivery vehicles create different relationships, based on mutual interest, trust and collaboration.

- 3.5 The particular benefits of creating a new, Council-owned company, and moving to a new mixed economy service provider model, are numerous and include the following:
- Public ownership of NEWCO means that local people, through Members as their elected representatives, remain in control of the way in which local public services are provided in future;
  - Greater collaboration will take place between expert frontline providers so that, whilst the Council does what it does best, it can partner with the right groups of high quality providers for the rest;

- Constructive competition (and collaboration) between partners will be encouraged, through which different, innovative and leaner solutions can emerge;
- Greater involvement of local voluntary and community groups will be possible with NEWCO, which will facilitate the co-production of services, with the VCS being able to be both providers and partners if they wish;
- NEWCO will gain access to new pools of investment from its partners, allowing it to extend its business to new customers and increase its profits;
- Greater expertise will be applied to the issues of the procurement, commercial negotiation, and risk management of public services, in the interests of Shropshire people;
- Better employment opportunities for current Council staff will be available, and new additional local jobs can be created, to develop long term sustainable employment prospects and grow Shropshire's local economy;
- The development of new job opportunities in a more vibrant local marketplace will make Shropshire a more attractive place to live and work;
- NEWCO allows the Council to create both public and social profit, which can then be re-invested in improving local services; and
- NEWCO enables the Council to more quickly generate innovative solutions to our social problems and needs, as well as greater efficiency and learning opportunities to make service provision more effective.

3.6 The plan for greater collaboration and open dialogue with other potential partners and providers, means there is a pre-requisite to generate trust between the provider market and local people. This means that NEWCO will need to be highly transparent, as well as more measurable and more accountable in its outcomes than a typical private company. Contractual certainty, innovation and value for money will be the key facets which providers of any type will need to demonstrate. The extended mixed economy that the Council will create as a strategic commissioner assumes that no single provider is best placed to deliver all public services and that a combination of local talents from the public sector (including town and parish councils), the VCS, and the private sector (and collaboration between them) is the most desirable solution. This will help shape the character of competition in the local marketplace, and contribute to its sustainability.

3.7 As I have outlined in the accompanying report to Members on Strategic Commissioning, the Council must look for new and innovative ways to

develop the local provider market, by “seed funding” new enterprises, building capacity across a range of quality local providers (social enterprises and SMEs), and by attracting venture capital or new partners. Regardless of the nature of the provider, the Council will still be held accountable by local people for delivery and outcomes. The new complexity of a more diverse local marketplace puts a fresh premium on local regulation of providers and on associated risk management.

- 3.8 Our agreed shared service plan, approved last year by the Council, clearly indicated that several early versions of such new delivery vehicles would be implemented by April 2013. Following the establishment of the company as a legal entity, the early identification of the first wave of Council services to be transferred to NEWCO will be a priority. Whilst there is more analysis to be done, the Council has, as part of its shared service programme, been examining which services might move first. Several areas of activity can be earmarked for possible transfer over the next 12 months, with further work being undertaken on the progressive transfer of other in-house Council services over the next 2-3 years.
- 3.9 The role of elected Members will be crucial to the effective working of the new provider marketplace and to the role that NEWCO plays in helping to develop this marketplace. Members will set the strategic direction for NEWCO; will act as owners on behalf of local people, to ensure it is run in the interests of local people; and crucially will be the local voice of the community in holding NEWCO to account for the way services are provided locally. (These roles are explained in more detail in section 4 below).

#### **4 The Shape of the New Company**

- 4.1 Following comprehensive legal advice, and an extensive review of many different company structures, it is clear that a company limited by shares is the model that most fits the current and foreseeable needs of the Council. This model combines the following benefits: the ability to trade, the ability to return profit to the public, any capital growth is retained by the Council, the professional management of the business is by expert directors, and Members (as elected representatives) provide overall strategic direction to NEWCO consistent with their democratic mandate and, through them, ownership remains in public hands. Importantly, NEWCO can be used also to create subsidiary businesses of various types (social enterprises, staff mutuals, joint ventures, community interest companies) to achieve a mixed economy of local providers, which creates a stronger, more diverse, and sustainable local marketplace for public services in Shropshire.
- 4.2 In the first instance, Shropshire Council would be the sole owner and “shareholder” of NEWCO and, on the basis that the Council would be transferring in some of its existing services and seeking to move to have those services trade with other public services; it would be able to

award a contract directly to NEWCO for such provision, without a procurement process that involves competitive tendering.

- 4.3 At a later stage, Shropshire Council may choose to invite other public sector bodies (including large and small local councils) to buy into NEWCO as new “shareholders”, as a way of sharing service costs across councils, or could choose to partner with local social enterprises or with other companies.
- 4.4 NEWCO, as a limited company, would be incorporated and designed with a series of checks and balances built-in, to ensure that it operated with the highest levels of integrity, transparency and probity. The governance and contractual arrangements that provide this important framework are explained from section 5 onwards and are summarised in diagram 1 (in Appendix 1).

## 5 The Checks and Balances in the design of NEWCO

- 5.1 NEWCO will be a platform for service provision and trading, to achieve the strategic objectives of the Council. Initially, only some Council commissioned services will be delivered by the company, and many services will remain within the Council in the short term. However, other services can be transferred into the new company progressively, over the next two years, as the Council chooses.
- 5.2 NEWCO will be a company limited by shares, and Shropshire Council will be the sole “shareholder” initially. Other public bodies could be invited to become “joint shareholders” at a later date, but only through the agreement of Shropshire Council
- 5.3 The “shareholder” representatives of NEWCO would be nominated elected Members, who are appointed to a “shareholder committee” on behalf of the council. Effectively, this would be the Council’s Cabinet, which will provide strategic direction to NEWCO, agree the strategic contract between the Council and NEWCO, and approve its annual business plan.
- 5.4 However, the day to day management of NEWCO will be carried out by a Board of Directors (comprising three expert appointees: a Managing Director, together with a Business Development/Marketing Director, and a Commercial and Finance Director; and at least two senior council officer representatives (including the Council Chief Executive). These governance arrangements need to be the subject of a separate, more detailed report to Members, which sets out clearly the roles, legal obligations and accountability of the directors of the company. The directors of NEWCO would operate within the powers afforded to them through a **strategic contract** signed with the Council, and would act only in a manner likely to deliver the annual business plan approved by the Cabinet.

- 5.5 As individual services are transferred from the Council to NEWCO, specific **service contracts** will be created, with their own detailed service specifications and payment regimes. Staff currently working for these services would be transferred into NEWCO, and would become direct employees of NEWCO.
- 5.6 Officers in the Council will measure and monitor the performance of NEWCO, in line with the requirements of these specific service contracts and would report regularly on this to elected Members. However, the ultimate assessment of NEWCO performance would rest with the Cabinet who, as the representatives of the owners, have the power to remove directors or even wind up the company, subject to specified exit provisions.
- 5.7 The company will act in compliance with all relevant legislation, including EU procurement law when engaging with third parties, and would act within the powers and authority levels of the Council.

## 6 The role of Members

- 6.1 Members have a crucial role to play in protecting the interests of local people, in ensuring that NEWCO is successful in delivering growth in local jobs, and in being profitable so that there is income for investment in improving local public services. Members have 3 distinct roles in relation to NEWCO:
- Setting the commissioning framework
  - Acting as responsible owners on behalf of local people
  - Acting as the voice of the community
- 6.2 **Setting the commissioning framework** - as described in the accompanying strategic commissioning paper, the Council and its elected Members form the local democratic hub for the setting of all Shropshire's public services. Members are the ultimate commissioners, providing the demand for the new services from NEWCO on behalf of local people. These commissioning requirements will be enshrined in the strategic contract for the new company, in specific service contracts at a more detailed level, and in the overall strategic direction of the company in meeting the Council's strategic outcomes.
- 6.3 **Acting as responsible owners** – nominated Members will sit on a committee, as “shareholder” representatives, and will exercise the power to approve the annual business plan of NEWCO, to appoint the board of directors, and to use their reserve matters power where appropriate.
- 6.4 **Acting as the voice of the local user community** – as described in the accompanying strategic commissioning paper, Members will play a crucial role in ensuring the involvement of local people in the provision

and co-production of new local services. By taking on the roles of “community activists” and “social entrepreneurs”, elected Members at local level will maximise the representation of local people in how services are provided in future. Members will ensure that the local impact of NEWCO’s services on the economy and the environment is positive and wholesome for the local people they represent. Delivery contracts for the new company will be well constructed, so that there is no loss of sovereignty for Members over the provision of public services.

- 6.5 It is essential that both the Council’s new commissioning arrangements and the working of NEWCO, taken together, enable Members to focus on local engagement and place-shaping activities, rather than reinforcing their tendency to act as “elected service managers”. The confidence of having professional frontline delivery experts in NEWCO will allow Members to avoid the risk of wanting to control or micro-manage the day-to-day operation of the new company and ensure that both public service performance and local democracy are enhanced. Indeed, prospective partners in the private sector have made it clear that they would not invest in NEWCO as a joint venture if it appeared to be subject to political interference.
- 6.6 For these reasons, the direct involvement of elected Members in the Board of NEWCO raises complex issues, whether this be as non-executive directors or as Chairman of the Board. This includes questions of personal liability, possible conflict of interest, and the likely exclusion from Council debates about the company. These matters will be the subject of separate, more detailed governance report to Members shortly.

## 7 The contractual framework

- 7.1 The contractual framework between the Council and NEWCO would be created through a **strategic contract**. This would include the following elements:-
- The overall relationship and guiding objectives
  - Any initial transfer of services into the company
  - Any specific service contracts
  - A performance review process
  - A target and incentivisation regime
  - An exit management process
  - Any 3<sup>rd</sup> party obligations



- 7.2 The strategic contract would include the requirement for the Cabinet, as owners' representatives, to sign off NEWCO's annual business plan, with its associated performance monitoring and incentive setting arrangements.
- 7.3 In respect of individual services, the Council will specify **service contracts** between it and NEWCO. The service contracts will include: the term of the contract, the specification of required outcomes for local people, the payment methods, the remedies and risk management arrangements, liability issues, exit arrangements, property matters, asset use, and other general contract issues.
- 7.4 This contractual framework gives elected Members control of the company, whilst leaving its day-to-day operational management in the hands of its Board.

## **8 The role of the Board of Directors**

- 8.1 The directors (as described in section 4.5 above) are appointed by the Cabinet, as the Council's representatives, and have an over-riding fiduciary duty to the company and its creditors.
- 8.2 Typically, the duties of the directors will be as follows: to manage the service delivery, to undertake redesign of service provision, to appoint and manage staff, to assess delivery options, to carry out marketing, to perform business planning, to lead procurements, to manage contracts, to manage finances, and to deal with third parties.
- 8.3 A separate governance paper will be produced for Members, setting out in more detail the roles, responsibilities, legal obligations, and accountabilities of the directors, so that action can be taken to establish the company as a legal entity and appoint its Board members on the basis of agreed criteria for their eligibility.

## **9 Creating opportunity for staff**

- 9.1 NEWCO represents a new way for the Council to provide greater opportunity and greater security of employment to staff. Career development opportunities and a broader work experience are likely to emerge, as NEWCO matures and collaborates with other partners. Building on the recent experience with our shared services implementation, staff of services transferred by the Council to the new company will be involved in the design process, and will be given the opportunity to take on new challenges.
- 9.2 Staff are our greatest asset, and NEWCO would employ staff (either new or as transferees from Shropshire Council) only after proper due diligence and consideration has been given to key legal requirements, such as terms and conditions of employment and pensions arrangements. For current staff of the Council these matters are protected under TUPE requirements.

- 9.3 As the new company takes on other contracts and expands its operations with new partners, the expectation is that it will create new jobs for local people, in addition to those transferred to it by the Council. This helps fulfil the Council's strategic objective of fostering economic growth and prosperity for local people.

## **10 Commercial Value and Branding**

- 10.1 As a new limited company, with a distinct identity and business plan, a clear marketing and business development plan will be early priorities for NEWCO. This will ensure that the values and activities of NEWCO are consistent and are clearly communicated to local people, the marketplace, and to potential investors and partners. It will be important to make clear that NEWCO will be **public sector owned** and will maintain the tradition of public service ethos that is at the heart of Shropshire Council.
- 10.2 As a company that is wishing to grow and attract investors, partners, customers, and high calibre staff, NEWCO will also require a business development plan to support its annual business plan. This is why one of its three directors will be responsible for marketing and business development.

## **11 The Need for Training and for Public Understanding**

- 11.1 We need new skills sets for both officers and Members, which will provide confidence in embracing these changes to service provision. There needs to be a single clear, simple overview of our new provider model, so that staff understand the difference between this and traditional outsourcing, and can see how their expertise contributes to new ways of delivering public services. In terms of new delivery models, this needs to extend to a willingness by staff to adapt to the development and roll-out of these.
- 11.2 Setting up NEWCO must not be confused with traditional private sector outsourcing. We already have a 'mixed economy' of service provision, but the balance between different providers will be likely to change over time. Our choice has been for a flexible provider model, which facilitates a pragmatic mix of approaches depending on what works best in the interest of local people – including in-house provision, traded and co-produced services, and some outsourced provision, rather than a single, "silver bullet" solution.
- 11.3 As we look to develop our role as a "gateway" to a diverse range of local public services, we will need strong public understanding and trust in the Council's changing future role as both a strategic commissioner and as owner of NEWCO.

## 12 Conclusion

- 12.1 Without strategic commissioning and a new provider models there is a risk that the traditional local government model is retained, (even though it is no longer affordable), albeit with frontline staff working for outsourced providers, as our costs are driven down. As a result, an unhelpful emphasis on rationing (rather than transforming) services could remain, as could structures that limit effective prevention and personalisation. At the same time, a greater reliance on “independent contractors” could increase the distance between our democratic decision makers and service outcomes.
- 12.2 The directional role of Members over the development of NEWCO on behalf of local people will be crucial to its success, and to demonstrate the link between local democracy and public service outcomes, whilst leaving the new company’s directors free from hindrance or interference in the day-to-day operation of the company.

<b>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)</b>
<b>Cabinet Member (Portfolio Holder)</b> Mr K R Barrow
<b>Local Member</b> N/A
<b>Appendices</b> Diagram of Proposal

# Our Proposal

